

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JESSIE BARRINGER,

Plaintiff,

Civil Action No. 18-CV-11174

vs.

HON. BERNARD A. FRIEDMAN

KRISTIN WHITWORTH,
BRENDA CARLSON, and
JANETTE PARKER,

Defendants.

**OPINION AND ORDER DENYING DEFENDANT CARLSON'S
AND DEFENDANT PARKER'S MOTIONS TO DISMISS**

This matter is presently before the Court on the motions of defendants Carlson and Parker to dismiss [docket entries 57 and 58]. Plaintiff has filed a response in opposition. Pursuant to E.D. Mich. LR 7.1(f)(2), the Court shall decide these motions without a hearing.

Defendants seek dismissal of the complaint pursuant to Fed. R. Civ. P. 12(b)(1) on the grounds that diversity jurisdiction (the sole jurisdictional basis asserted in the complaint) is lacking because plaintiff is domiciled in Michigan, not Arkansas as alleged in the complaint. If plaintiff is domiciled in Michigan then defendants' jurisdictional argument would be correct, as they, too, are domiciled in Michigan, and diversity jurisdiction does not exist unless there is "complete diversity," i.e., no overlap in citizenship between plaintiff and defendants. *Lincoln Prop. Co. v. Roche*, 546 U.S. 81, 89 (2005). Plaintiff concedes that he, as the party seeking to invoke the Court's jurisdiction, has the burden of proving its existence.

Plaintiff has met this burden. In an affidavit filed previously in this matter, *see* docket entry 49, Ex. A, plaintiff avers that he moved from Michigan to Arkansas in 2015; that he

moved all of his property with him; that since 2016 he has filed his tax returns as an Arkansas resident; that he receives his W-2s at his Arkansas address; that since that time he no longer files Michigan income tax returns; that he purchased his automobile in Arkansas and has registered it there; that he has obtained a driver's license in Arkansas; and that he intends to maintain his primary residence in Arkansas, not in Michigan. Defendants' only counter-evidence is that plaintiff has a Michigan's driver's license. But this merely shows, as plaintiff concedes, that he used to live in Michigan and that the Michigan license has not yet expired.

On this record, plaintiff has proven to the Court's satisfaction that he is now domiciled in, and therefore is a citizen of, the State of Arkansas, as he resides in that state and intends to remain there. *See Mississippi Bank of Choctaw Indians v. Holyfield*, 490 U.S. 30, 48 (1989). As defendants admit they are citizens of the State of Michigan, diversity is complete. Accordingly,

IT IS ORDERED that defendants' motions to dismiss are denied.

Dated: July 3, 2018
Detroit, Michigan

s/Bernard A. Friedman
BERNARD A. FRIEDMAN
SENIOR UNITED STATES DISTRICT JUDGE

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing document was served upon counsel of record and any unrepresented parties via the Court's ECF System to their respective email or First Class U.S. mail addresses disclosed on the Notice of Electronic Filing on July 3, 2018.

s/Johnetta M. Curry-Williams
Case Manager